

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Red Wing Shoe Company, Inc.,)	
)	
Plaintiff,)	Case No. _____
)	
v.)	
)	
Shoes For Crews, LLC, and)	
Shoes For Crews, Inc.,)	COMPLAINT
)	(Jury Trial Demanded)
)	
Defendants.)	
_____)	

Red Wing Shoe Company, Inc., for its Complaint against Defendants Shoes For Crews, LLC and Shoes For Crews, Inc., states and alleges as follows:

NATURE OF THE ACTION

1. This is an action for federal unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); for violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44; and for unfair competition under the common law of the State of Minnesota.

PARTIES

2. Red Wing Shoe Company, Inc., is a Minnesota corporation having a principal place of business at 314 Main Street, Red Wing, Minnesota 55066.

3. Shoes For Crews, LLC, is a Florida limited liability company having a principal place of business at 250 South Australian Avenue, West Palm Beach, Florida 33401.

4. Shoes For Crews, Inc., is a Florida corporation having a principal place of business at 250 South Australian Avenue, West Palm Beach, Florida 33401.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims asserted in this action under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 because the claims involve a federal question, and under 28 U.S.C. § 1332 because the parties are diverse. This Court also has subject matter jurisdiction over the claims of federal unfair competition under 28 U.S.C. § 1338(a) because the claims arise under an Act of Congress (section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)), and has subject matter jurisdiction over the claim of common law unfair competition in accordance with 28 U.S.C. § 1338(b). This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 over the claims arising under Minn. Stat. §§ 325D.44 and Minnesota state common law.

6. This Court has personal jurisdiction over Defendants Shoes For Crews, LLC, and Shoes For Crews, Inc. (collectively referred to “Shoes For Crews”) because Shoes For Crews has purposefully availed itself of the privilege of conducting business in this District. Shoes For Crews has contacts with this District that are sufficiently substantial and of such a nature as to make the assertion of personal jurisdiction reasonable. Specifically, Shoes For Crews advertises and sells its products in this District via its internet website, www.shoesforcrews.com, and those activities are related to this litigation.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because the conduct that forms the basis of the claims in this Complaint—Shoes for Crews’

misleading advertising—occurred and is occurring in this District. Venue is also proper in this Court under 28 U.S.C. § 1391(b)(1) because Shoes For Crews has sufficient minimum contacts within the state, subjecting it to personal jurisdiction under 28 U.S.C. § 1391(c)(2).

FACTS

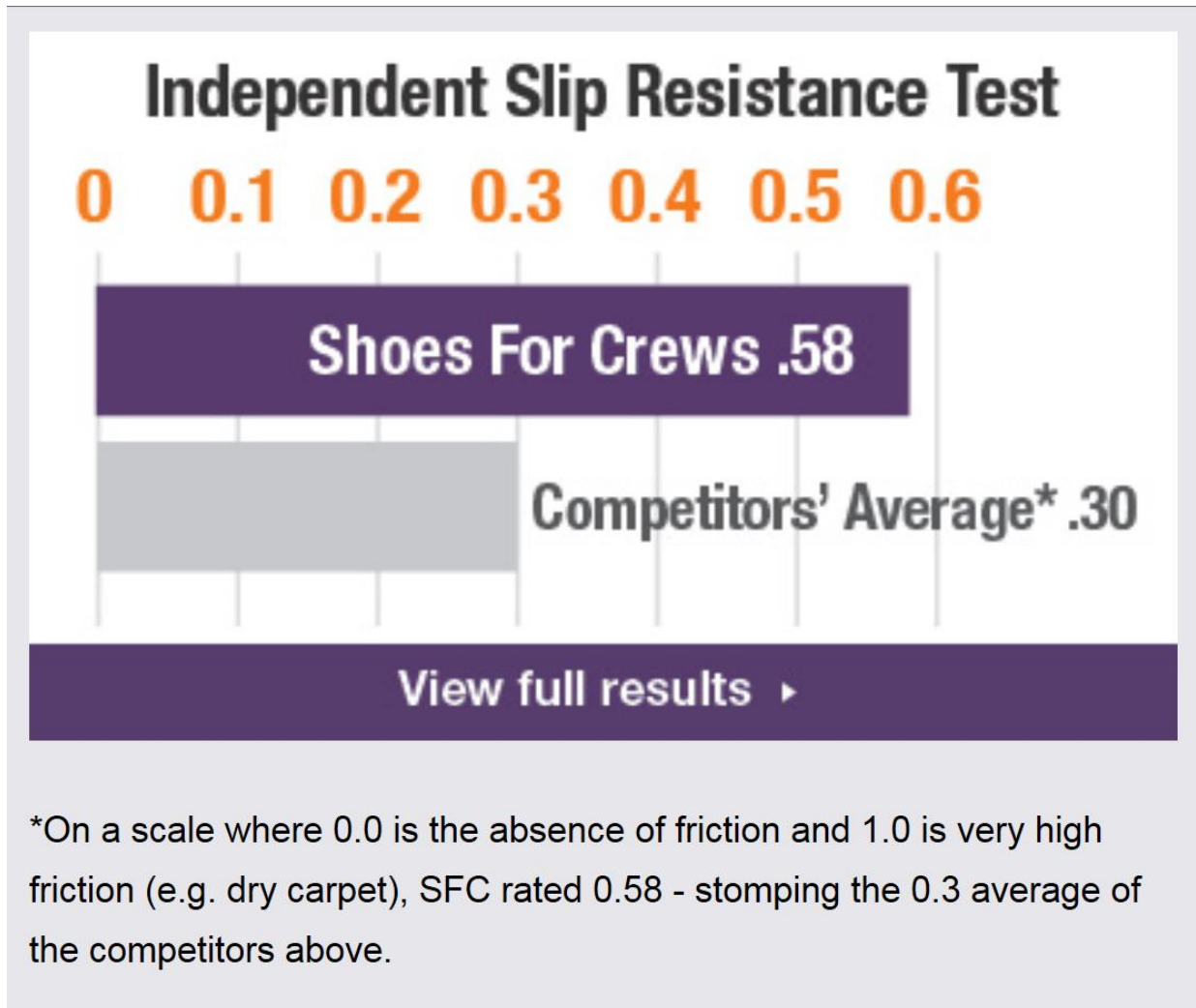
8. Red Wing Shoe Company is a leading manufacturer and seller of purpose-built footwear.

9. Red Wing Shoe Company manufactures and sells a line of footwear under the “WORX” trade name. *See* www.redwing.redwingshoestore.com/product/category/worx. Red Wing Shoe Company’s website explicitly states that the WORX line includes “both safety work shoes and slip resistant footwear.” *Id.*

10. Shoes For Crews also manufactures and sells slip-resistant footwear. *See* www.shoesforcrews.com/sfc3/index.cfm?changeWebsite=US_en&route=inserts.aboutus/about_us. According to its website, Shoes For Crews focuses on making slip-resistant footwear for “foodservice, hospitality, healthcare, and industrial employees.” *Id.* Specifically, Shoes For Crews claims, “You’ll find our footwear in the finest restaurants, the greasiest kitchens, hospitals and medical facilities, and in industrial and manufacturing operations with slippery floor hazards.” *Id.*

11. On its website, Shoes For Crews makes the following claim: “Independent lab tests prove that the [shoes For Crews] Mighty Grip® outsole outperforms the competition.” *Id.*

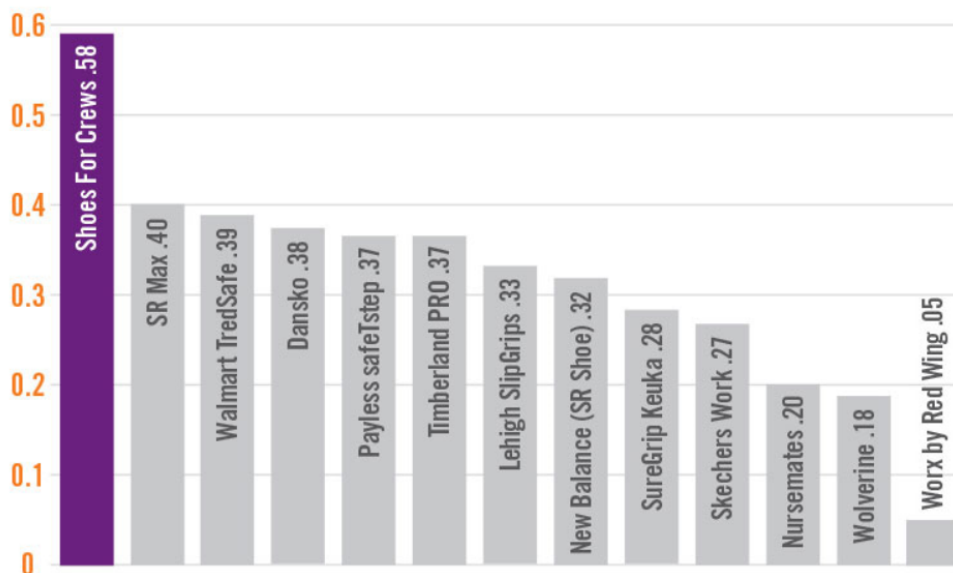
12. Next to this statement on its website, Shoes For Crews includes the following chart:



13. Clicking on the “View full results” tab links to the following webpage:
www.shoesforcrews.com/sfc3/index.cfm?changeWebsite=US_en&route=inserts.QA/mad eof_content. This webpage includes the following chart and statements (referred to collectively as the “Comparative Advertisement”):

INDEPENDENT SLIP RESISTANCE TEST RESULTS

by Precision Testing Laboratories*



Independent Slip Resistance Test Results:

This test was performed in December 2013 by Precision Testing Laboratories on worn, smooth, greasy/wet restaurant quarry tile, and coated with water and Crisco brand shortening using Brungraber Mark II Slip Tester according to ASTM Standard F1677.

*On a scale where 0.0 is the absence of friction and 1.0 is very high friction (e.g. dry carpet), SFC rated 0.58 - stomping the 0.3 average of the competitors above.

14. According to Shoes For Crews' Comparative Advertisement, the "Worx by Red Wing" footwear scored the lowest of all of the footwear allegedly tested for "slip resistance." *Id.*

15. The Shoes For Crews Comparative Advertisement fails to identify specifically which "Worx by Red Wing" shoes or boots were allegedly tested.

16. The Shoes For Crews' Comparative Advertisement states that the testing was conducted "according to ASTM Standard F1677." *Id.*

17. ASTM Standard F1677, titled “Standard Test Method for Using a Portable Inclineable Articulated Strut Slip Tester (PIAST),” was withdrawn as an ASTM standard in 2006—more than seven years before Shoes For Crews conducted its comparative testing. *See* <http://www.astm.org/Standards/F1677.htm>.

18. The current active ASTM standard for testing slip resistance in footwear is ASTM F2913-11, titled “Standard Test Method for Measuring the Coefficient of Friction for Evaluation of Slip Performance of Footwear and Test Surfaces/Flooring Using a Whole Shoe Tester.” *See* www.astm.org/Standards/F2913.htm.

19. Upon information and belief, Shoes For Crews did not have the footwear identified in the Comparative Advertisement tested under ASTM F2913-11.

20. To satisfy the ASTM testing standard, the test surface must be properly calibrated and standardized before each test. *See, e.g.*, ASTM F2913-11 § 10 (“Calibration and Standardization—Test Surfaces (Floorings) and Lubricants”), found at www.astm.org/FULL_TEXT/F2913/HTML/F2913.htm#s00049.

21. Upon information and belief, the comparative tests identified in the Comparative Advertisement were not properly calibrated or standardized.

22. On January 14, 2016, Red Wing Shoe Company sent Defendants a letter identifying these issues, among others, and informed Defendants that Red Wing Shoe Company believed the Comparative Advertisement was misleading. A true and correct copy of Red Wing Shoe Company’s letter is attached as Exhibit A.

23. On January 28, 2016, Shoes For Crews responded to Red Wing Shoe Company's letter. A true and correct copy of Shoes For Crews' letter is attached as Exhibit B.

24. In its responsive letter, Shoes For Crews did not dispute that ASTM Standard F1677 had been withdrawn, but instead stated that it "does not comment on the status of the standard nor does it indicate that ASTM Standard F1677 is the industry standard." *Id.*

25. In its responsive letter, Shoes For Crews described the "testing conditions" for the testing identified in its Comparative Advertisement. *See id.* The "testing conditions" identified in the letter do not include any attempt to calibrate or standardize the testing.

26. In its responsive letter, Shoes For Crews identified the only Red Wing Shoe Company footwear used in the comparative testing as "Red Wing's 5266 WORX Men's 6-Inch Boot." *Id.*

27. The Red Wing 5266 WORX boot is detailed on Red Wing Shoe Company's website: www.redwingsafety.com/safety-boot/5266-safe-us/5266-worx-mens-6-inch-boot-black/filter-worx. Here is a picture of the 5266 WORX boot:



28. The slip resistance of the Red Wing 5266 WORX boot is listed as only “better.” *Id.*

29. There are several WORX shoes for which the slip resistance is listed as “best.” See www.redwingsafety.com/safety-boots/filter-slip-resistance-best,worx. One of those shoes is the Red Wing 6333 WORX, which is detailed on Red Wing Shoe Company’s website: www.redwing.redwingshoestore.com/product/06333. Here is a picture of the 6333 WORX shoe:



30. The Red Wing 6333 WORX shoe is more suited for foodservice, hospitality, healthcare, and industrial employees than the Red Wing 5266 WORX boot.

COUNT I
(Federal Unfair Competition)
(Lanham Act § 43(a), 15 U.S.C. § 1125(a))

31. Red Wing Shoe Company restates and incorporates by reference the allegations in Paragraphs 1-30.

32. Shoes For Crews’ Comparative Advertisement is a commercial advertisement purporting to compare its own product with its competitors’ products.

33. Shoes For Crews' Comparative Advertisement is a misleading representation of fact for several reasons, including:

- a. It is based on the wrong testing standard;
- b. The testing standard it is based on has been withdrawn;
- c. The testing protocol was improper in that the tests were not properly calibrated or standardized; and
- d. The testing is based on the Red Wing Shoe 5266 WORX boot and not the Red Wing 6333 WORX shoe, which is more suited for foodservice, hospitality, healthcare, and industrial employees.

34. Shoes For Crews' Comparative Advertisement is likely to deceive a substantial segment of its audience.

35. Shoes For Crews' Comparative Advertisement is likely to influence the purchasing decision.

36. Shoes For Crews' Comparative Advertisement has entered interstate commerce.

37. Shoes For Crews' Comparative Advertisement constitutes unfair competition under 15 U.S.C. § 1125(a)).

38. Shoes For Crews' unlawful actions have caused, and will continue to cause, Red Wing Shoe Company irreparable harm unless enjoined.

39. Shoes For Crews has profited from its unlawful actions and has been unjustly enriched to the detriment of Red Wing Shoe Company.

40. Shoes For Crews' unlawful actions have caused Red Wing Shoe Company monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT II
(Minnesota Deceptive Trade Practices Act)
(MINN. STAT. § 325D.44, *et seq.*)

41. Red Wing Shoe Company restates and incorporates by reference the allegations in Paragraphs 1- 40.

42. The misleading representation of facts contained in Shoes For Crews' Comparative Advertisement disparages Red Wing Shoe Company's footwear.

43. Shoes For Crews' Comparative Advertisement constitutes unfair and deceptive trade practices under Minnesota Statutes § 325D.44, *et seq.*

44. Shoes For Crews' unlawful actions have caused, and will continue to cause, Red Wing Shoe Company irreparable harm unless enjoined.

45. Shoes For Crews has profited from its unlawful actions and has been unjustly enriched to the detriment of Red Wing Shoe Company.

46. Shoes For Crews' unlawful actions have caused Red Wing Shoe Company monetary damage in an amount presently unknown, but in an amount to be determined at trial.

COUNT III
(Common Law Unfair Competition)

47. Red Wing Shoe Company restates and incorporates by reference the allegations in Paragraphs 1-46.

48. Shoes For Crews' Comparative Advertisement is misleading.

49. Shoes For Crews' slip-resistant footwear is marketed through the same channels of trade as Red Wing Shoe Company's slip-resistant footwear.

50. Shoes For Crews' Comparative Advertisement is likely to target the same classes of consumers as Red Wing Shoe Company's slip-resistant footwear.

51. Shoes For Crews' Comparative Advertisement constitutes common law unfair competition under Minnesota state law.

52. Shoes For Crews' unlawful actions have caused, and will continue to cause, Red Wing Shoe Company irreparable harm unless enjoined.

53. Shoes For Crews has profited from its unlawful actions and has been unjustly enriched to the detriment of Red Wing Shoe Company.

54. Shoes For Crews unlawful actions have caused Red Wing Shoe Company monetary damage in an amount presently unknown, but in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Red Wing Shoe Company prays that the Court enter judgment:

1. In favor of Red Wing Shoe Company and against Shoes For Crews on all of Red Wing Shoe Company's claims;

2. Preliminarily and permanently enjoining and restraining Shoes For Crews, its parent company, subsidiaries, affiliates, sister companies, officers, agents, servants, employees, attorneys, and all others in active concert or participation with Shoes For Crews from using the Comparative Advertisement in any way.

3. Requiring Shoes For Crews to account for and pay over to Red Wing Shoe Company the amount of Red Wing Shoe Company's damages in accordance with 15 U.S.C. § 1117 and Minn. Stat. § 325D.44;

4. Requiring Shoes For Crews to account for and pay over to Red Wing Shoe Company the costs of this action in accordance with 15 U.S.C. § 1117 and Minn. Stat. § 325D.44;

5. Finding this case is exceptional and trebling any damage award in accordance with 15 U.S.C. § 1117;

6. Finding this case exceptional and requiring Shoes For Crews to pay over to Red Wing Shoe Company its attorneys' fees incurred in connection with this case in accordance with 15 U.S.C. § 1117 and Minn. Stat. § 325D.44;

7. Requiring Shoes For Crews to account for and pay over to Red Wing Shoe Company the amount of Red Wing Shoe Company's damages, together with costs and disbursements, including costs of investigation and reasonable attorneys' fees in accordance with Minn. Stat. § 8.31, subd. 3a;

8. Requiring Shoes For Crews to pay Red Wing Shoe Company pre-judgment interest, in accordance with Minn. Stat. §§ 549.09(b), (c)(2), accruing from the date of Red Wing Shoe Company's written notice of its claim, at the legal rate of 10% per annum;

9. Requiring Shoes For Crews to pay Red Wing Shoe Company post-judgment interest, in accordance with Minn. Stat. §§ 549.09(a), (c)(2), at the legal rate of 10% per annum from the date of entry of judgment until paid in full; and

10. Awarding Red Wing Shoe Company such other relief as the Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Red Wing Shoe Company hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

Date: February 21, 2016

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